

1 D. GEORGE SWEIGERT, C/O
 2 P.O. BOX 152
 3 MESA, AZ 85211

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 DOCUMENT
 ELECTRONICALLY FILED
 DOC #
 DATE FILED: 11-1-18

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 6 IN THE UNITED STATES DISTRICT COURT
 7 FOR THE SOUTHERN DISTRICT OF NEW YORK
 8 (FOLEY SQUARE)

9 D. GEORGE SWEIGERT

10 Plaintiff,

11 vs.

12 JASON GOODMAN

13 Case No.: 1:18-cv-08653-UA

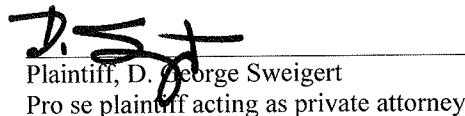
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**19 NOTICE OF PLAINTIFF'S AMENDED MOTION
 20 PURSUANT TO FRCP RULE 12(F) TO STRIKE
 21 DEFENDANT'S "ANSWER"**

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 NOW COMES THE PRO SE plaintiff, a layman non-attorney who is acting in the capacity of a private attorney general in a public interest lawsuit, to respectfully NOTICE the Clerk of the Court and interested parties of the accompanying MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S AMENDED MOTION TO STRIKE DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PER FRCP RULE 12(F) pursuant to Local Rule 7.1. MOTION is made upon this Court to STRIKE the Defendant's "ANSWER", appearing as Doc. No. 35, filed 10/22/2018 (herein "ANSWER"). Plaintiff herein invokes F.R.C.P. Rule 12(f) and New York Civil Practice Laws and Rules (CPLR) 3024(a) and (b). Plaintiff's documents appearing as Doc. Nos 41 and 42, 10/19/2018 are hereby AMENDED pursuant to FRCP Rule 15(a).

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2 **DECLARATION / ATTESTATION**
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4 I hereby attest that the foregoing is accurate and true under the penalties of perjury. Pursuant to **Local Rule 7.1** I
5 hereby attest that the any attached exhibits accompanying this pleading are accurate and true copies of source
6 documents located on the Internet.

7 Signed this 29 day of October, 2018
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11 Plaintiff, D. George Sweigert
12 Pro se plaintiff acting as private attorney general
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D. GEORGE SWEIGERT, C/O
P.O. BOX 152
MESA, AZ 85211

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
(FOLEY SQUARE)**

D. GEORGE SWEIGERT

Plaintiff,

VS.

JASON GOODMAN

Case No.: 1:18-cv-08653-UA

**MEMORANDUM OF POINTS & AUTHORITIES
IN SUPPORT OF PLAINTIFF'S AMENDED
MOTION TO STRIKE DEFENDANT'S ANSWER
OR OTHERWISE MAKE MOOT PURSUANT TO
FRCP RULE 12(F)**

**MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S AMENDED MOTION
TO STRIKE DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PURSUANT TO FRCP RULE
12(F)**

1. Pursuant to **Local Rule 7.1**, the Federal RICO Plaintiff seeks to STRIKE OR OTHERWISE MAKE MOOT the Defendant's ANSWER (**Doc. No. 35**, 10/10/2018 [herein **ANSWER**]). These POINTS AND AUTHORITIES are herein presented to support Plaintiff's AMENDED MOTION TO STRIKE (filed pursuant to Fed. R. Civ. Proc. (FRCP) Rule 15(a)). Plaintiff herein relies of **FRCP Rule 12(f)** and New York Civil Practice Law and Rules (**CPLR**) § 3022 to seek this relief. The Defendant's ANSWER is defective and should be deemed moot by this Court.

DEFECTIVE ANSWER

2. The Court will observe that the Defendant ANSWER (Doc. 35) was **NOT** verified; but, the Plaintiff's operative South Carolina Amended Complaint **WAS** verified (Doc. No. 5, filed 06/29/2018 [herein the **South Carolina AC**]). CPLR § 3022 indicates that a Plaintiff that files a **VERIFIED** complaint as the right to expect a verified answer. If the answer is not verified it is to be treated as a legal nullity. Quoting CPLR § 3022:

**MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINTIFF'S AMENDED MOTION TO STRIKE
DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PURSUANT TO FRCP RULE 12(F)**

1 **CPLR §3022 states:**

2 A defectively verified pleading shall be treated as an unverified pleading. Where a pleading is
3 served without a sufficient verification in a case where the adverse party is entitled to a verified
4 pleading, he may treat it as a nullity, provided he gives notice with due diligence to the attorney of
5 the adverse party that he elects so to do.

6 3. The court deciding *Rodriguez v Westchester County Bd. of Elections* expressed the issue in this
7 manner:

8 Generally, "where a pleading is served without a sufficient verification in a case where the adverse
9 party is entitled to a verified pleading, he may treat it as a nullity, provided he gives notice with
10 due diligence (emphasis supplied) to the attorney of the adverse party that he elects so to do"
(CPLR 3022).

11 (*Rodriguez v Westchester County Bd. of Elections* 2015 NY Slip Op 25063 Decided on February
12 27, 2015 Supreme Court, Westchester County Wood, J. Published by New York State Law
13 Reporting Bureau pursuant to Judiciary Law § 431)

14 4. The court deciding *Drake v Touba Harou Cayor Transp., Inc.* reasoned that:

15 CPLR §3022, states that a defective verification as tantamount to no verification at all and
16 authorizes a party to reject a pleading which is unverified or verified in a defective manner. CPLR
17 §3022 states

18 A defectively verified pleading shall be treated as an unverified pleading. Where a pleading is
19 served without a sufficient verification in a case where the adverse party is entitled to a verified
20 pleading, he may treat it as a nullity, provided he gives notice with due diligence to the attorney of
21 the adverse party that he elects so to do.

22 Thus, when a pleading, in a case where verification is required, is served without proper
23 verification, the same can be treated as a nullity, provided the party rejecting said pleading, gives
24 his adversary immediate notice. *Master v. Pohanka*, 44 AD3d 1050 (2nd Dept. 2007); *Air New
25 York, Inc. v. Alphonse Hotyel Corp.*, 86 AD2d 932 (3rd Dept. 1982); *Ladore v. Mayor and Board
26 of trustees of the Village of Port Chester*, 70 AD2d 603 (2nd Dept. 1979).

27 (*Drake v Touba Harou Cayor Transp., Inc.* 2008 NY Slip Op 50468(U) [19 Misc 3d 1102(A)]
28 Decided on February 21, 2008 Supreme Court, Bronx County Roman, J. Published by New York
 State Law Reporting Bureau pursuant to Judiciary Law § 431)

DEFENDANT'S BIFURCATED ANSWER AND COUNTERCLAIM

5. The Court will observe that the Defendant served a highly unorthodox letter upon the Clerk of the Court (Doc. No. 36, 10/11/2018 [herein **LETTER**]). In Defendant's **LETTER** the following is stated:

Please take notice that I, Defendant Jason Goodman, in the matter of D. George Sweigert v Jason Goodman 1:18-cv-08653-UA **intend to file a counterclaim.** [emphasis added]

6. In New York a counterclaim may accompany an answer pursuant to **CPLR § 3011**. There is no procedure to support bifurcating the two (2). **CPLR § 3011** states:

Kinds of pleadings

There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff and a cross-claim against a defendant. A defendant's pleading against another claimant is an interpleader complaint, or against any other person not already a party is a third-party complaint. There shall be a reply to a counterclaim denominated as such, an answer to an interpleader complaint or third-party complaint, and an answer to a cross-claim that contains a demand for an answer. If no demand is made, the cross-claim shall be deemed denied or avoided. There shall be no other pleading unless the court orders otherwise. [emphasis added]

7. The Plaintiff objects to being forced into a limbo state orbiting the Defendant while awaiting his bifurcated “counter-claim”, as announced in the highly unorthodox LETTER (Doc. 36) to the Clerk of the Court. The Defendant has not been officially summoned and/or served (a deficiency corrected by the Defendant’s appearance (Doc. No. 34, 10/10/2018 [APPEARANCE]).

DEFENDANT'S ATTEMPTED SERVICE VIA E-MAIL MESSAGE

8. On 10/11/2018 the Defendant attempted to send an electronic mail message to the Plaintiff that purported has an ANSWER and CERTIFICATE OF SERVICE attached as PDF documents. However, the Plaintiff has made no prior arrangements with the Defendant to receive pleadings via electronic transmission. Again, this is an unorthodox activity undertaken by the Defendant by his own volition.

9. Interesting (as explained in the verified exhibits attached to this pleading) the file "Certificate of Service" contain indicators of a computer virus (see Exhibit One [Exh. 1]. Therefore, the Plaintiff made no attempt to read or act on any of the attached files, save to have them scanned for malicious software code.

10. As indicated in verified **Exh. 1**, the following error message was displayed in the Plaintiff's GMAIL client:

Encrypted attachment warning

– Be careful with this attachment. This message contains 1 encrypted attachment that can't be scanned for malicious content. Avoid downloading it unless you know the sender and are confident that this email is legitimate.

11. The Plaintiff attests that the e-mail attachment "Certificate of Service" could NOT be scanned by several on-line virus detection services (see Exh. 2, 3 and 4). This situation is normally an indicator of a "zero day" virus or other sophisticated embedded malware.

SUMMARY

12. The Defendant has proceeded ahead at his own peril and volition to file a barrage of documents that are riddled with errors which are prejudicial to the Plaintiff. Defendant's papers are fatally defective for several reasons (as stated above) and should be struck to improve the efficiency of the court and the administration of justice.

13. I certify, under the penalties of perjury, that the foregoing is true and accurate. Further, I attest that the attached exhibits to this pleading are accurate and true representations of screen-shots depicting a PDF file received for the Defendant.

Dated this day of October , 2018

Respectfully submitted

D. G. S.
D. GEORGE SWIGERT

Pro se non-attorney acting as a private attorney general for this public interest lawsuit

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7 **EXHIBITS**

8
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10 **DECLARATION / ATTESTATION**

11 I hereby attest that the foregoing is accurate and true under the penalties of perjury. Pursuant to **Local Rule 7.1** I
12 hereby attest that the any attached exhibits accompanying this pleading are accurate and true copies of source
13 documents located on the Internet.

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15 Signed this 29 day of October, 2018

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18 Plaintiff, D. George Sweigert
19 Pro se plaintiff acting as private attorney general

1 Exhibit 1
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Answer filed □ Index x

Jason Goodman <jason@21stcentury3d.com>

to me. David □

Also sent to

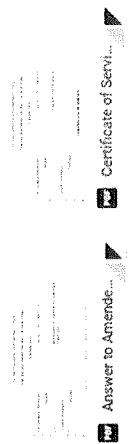
D. George Sweeny CIO
PO. Box 152
Mesa AZ 85211

Have a nice day

© Thu, Oct 11, 9:37 AM (4 days ago)

2 Attachments

⚠ Encrypted attachment warning – Be careful with this attachment. This message contains 1 encrypted attachment that can't be scanned for malicious content.
Avoid downloading it unless you know the sender and are confident that this email is legitimate.



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Exhibit 2

https://metadefender.opswat.com/results/file/cDEAMTA

80%

SOURCE: Cloudflare (using Cloudflare's own security infrastructure)

SIGN IN

ANALYZE

Certificate of Service for Amended Complaint[2].PDF

SHA256: 1ED47F36035FF70459BCCA24442857AC9642E0A495573468AD75FE37165DFC1C

MULTISCAN SCORE: 0/35

VULNERABILITY SCORE: 0/1

CAST YOUR VOTE ON THIS FILE:

REPORTED VULNERABILITY: 0

Clean: 0

Malicious: 0

No vulnerabilities reported!

File information: SHA256, Multiscanning, Security Reputation, Scan History, Community Feedback.

File information: SHA256, Multiscanning, Security Reputation, Scan History, Community Feedback.

You must be signed in to vote.

Get this data from our API!

Shell, Node.js, Python, Ruby, Go, PowerShell



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28 Exhibit 3

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Search or scan a URL, IP address, domain, or file hash

https://www.virustotal.com/#/file/1fed47356dd35ff7d4f9bcca24442857

F-PROT appended

 PDF Info

 Commonly Abused Properties

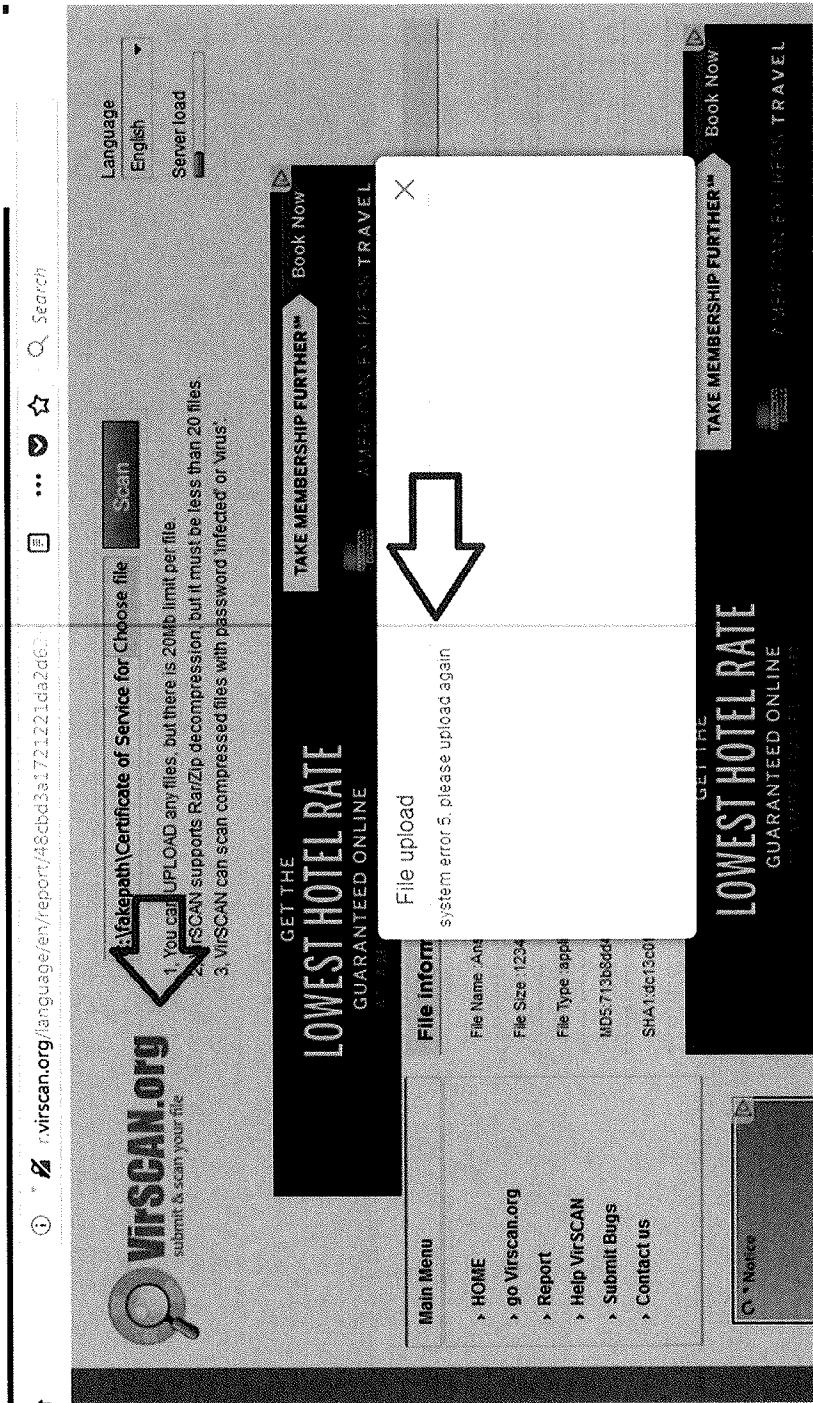
- Makes use of AcroForm objects.
- Contains 4 object stream(s).
- Makes use of Digital Rights Management or needs a password to be read.
- Contains 2 page(s).
- Contains 32 object start declaration(s) and 32 object end declaration(s).
- Contains 27 stream object start declaration(s) and 0 stream object end declaration(s).
- Has a pointer to the cross reference table (startxref).

 ExifTool File Metadata

CreateDate	2018-10-11 16:24:15Z
CreatorTool	Word
DocumentID	uuid:a8db954b-4e14-674e-8293-47e9491f5d14
Encryption	Standard V4.4 (128-bit)
FileType	PDF
FileTypeExtension	pdf
Format	application/pdf
HasXFA	No
InstanceId	uuid:da4fec7-41a1-864d-ac34-92529148730f
Linearized	Yes
MIMEType	application/pdf



1 Exhibit 4
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D. GEORGE SWEIGERT
Plaintiff,
vs.
JASON GOODMAN
Defendant

Case No.: 1:18-cv-08653-UA

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The Plaintiff certifies under penalties of perjury that the enclosed documents have been sent via First Class postage paid U.S. Mail to:

**Jason Goodman
252 7th Avenue #6S
New York, NY 10001**

**PRO SE DIVISION -- 200
Clerk of the Court
U.S. District Court for the SDNY
(FOLEY SQUARE)
500 Pearl Street
New York, New York 10007-1312**

Respectfully dated this day October, 2018,

2.57

D. GEORGE SWEIGERT

CERTIFICATE OF SERVICE

PRESS FIRMLY TO SEAL

PRIORITY[®]
★ MAIL ★

D. GEORGE SWEIGERT, C/O
P.O. BOX 152
MESA, AZ 85211



PICKUP AVAILABLE

* Domestic only

2018 NOV 1 PM 3:55

U.S. POSTAL SERVICE
Delivery Point
POSTAGE PAID

This envelope is made from post-consumer waste. Please recycle - again.

TO:

PRO SE DIVISION

Clerk of the Court

U.S. District Court for the SDNY
(FOLEY SQUARE)
500 Pearl Street
New York, New York 10007-1312

EXPECTED DELIVERY DAY: 11/01/2018
USPS TRACKING NUMBER



ate Envelope
ary 2014

VISIT US AT USPS.COM[®]